

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. P-850
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued July 28, 2003)

On October 8, 2002, Interstate Power and Light Company (IPL) filed a petition and exhibits for a pipeline permit for a natural gas pipeline approximately 3.2 miles long in Muscatine County, Iowa. The petition is for an existing pipeline built in 1980 and 1982 for which a permit was never requested or granted. The pipeline consists of approximately 3.1 miles of 8-inch pipe and approximately 0.1 mile of 4-inch pipe. The pipeline transports natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to a regulator station near the intersection of Cedar and Houser Streets in Muscatine, Iowa. The pipeline is a distribution main entirely within the city limits of Muscatine that has a maximum allowable operating pressure of 275 psig. IPL filed amendments to its petition and exhibits on January 13, March 26, and June 20, 2003.

On July 23, 2003, the Utilities Board (Board) assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

Ordinarily, a petitioner with a pipeline that will cross a railroad right-of-way must show compliance with the requirements of Iowa Code § 476.27 and Board rules at 199 IAC 42. The pipeline at issue in this case crosses the railroad right-of-way of the Iowa Chicago & Eastern Railroad at one location. However, the pipeline was constructed in 1980 and 1982. At the time, IPL notified the railroad of the crossing. IPL and the railroad had no agreement concerning the crossing. Since the pipeline was constructed prior to July 1, 2001, and IPL and the railroad had no agreement concerning the crossing, § 476.27 and the Chapter 42 rules do not apply to it. 2001 Iowa Acts, ch. 138, § 2.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues,

and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also

tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

IPL must submit prepared testimony and exhibits prior to the hearing. At a minimum, IPL's prepared testimony must address the issues listed above, and must address the issues identified in the memo dated July 18, 2003, by Mr. Jeffrey L. O'Neal, attached to this order. In particular, IPL must address why this pipeline was built without first obtaining a pipeline permit from the Board, what steps IPL has undertaken to ensure that it does not construct pipelines without first obtaining a permit from the Board, and why the Board should not impose a civil penalty for the violation pursuant to Iowa Code § 479.31. IPL should address the factors in § 479.31 when discussing whether a civil penalty is appropriate. In addition, if IPL is asserting that Board subrule 10.14(2) did not apply to the pipeline at the time of its construction, it must provide evidence to support this position. Alternatively, if IPL is requesting a waiver of subrule 10.14(2), it must provide evidence to support its request and show it meets the criteria in 199 IAC 1.3 for grant of a waiver.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than IPL who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount

of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

IPL and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. IPL does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to

writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to

199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine 199 IAC 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There is a link to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, has prepared a memo dated July 18, 2003, concerning IPL's petition. Mr. Gary R. Burnett, utility regulatory inspector for the Board, also prepared a memo dated February 5, 2003, concerning the petition. A copy of each memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memos and of the facts contained therein, thus making them a

part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the memos must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prepared testimony and at the hearing. Mr. O'Neal and Mr. Burnett will be present at the hearing and available for cross-examination regarding their memos.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to IPL's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before August 11, 2003, IPL must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before August 25, 2003.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Thursday, September 4, 2003, in Conference Room 3, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prefiled testimony to the court reporter at the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than September 2, 2003, to request that appropriate arrangements be made.

d. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's memo dated July 18, 2003, and of Mr. Burnett's memo dated February 5, 2003, both of which are attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of either memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine Mr. O'Neal or Mr. Burnett concerning the statements in the memo must file a notice of intent to cross-examine no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon IPL, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. IPL must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 28th day of July, 2003.

Iowa Utilities Board

SAFETY AND ENGINEERING SECTION

TO: Docket No. P-850 File

FROM: Gary R. Burnett

DATE: February 5, 2003

SUBJ: Interstate Power and Light Company
Pipeline Petition Route Inspection - Muscatine Pressure Zone One

On October 7, 2002, Interstate Power and Light Company (Interstate) filed a petition for a natural gas pipeline permit with the Iowa Utilities Board. Interstate has an existing natural gas pipeline within the City of Muscatine that has not been previously permitted. The existing pipeline is comprised of approximately 3.1 miles of 8.625 inch diameter and 0.1 mile of 4.500 inch diameter steel pipeline for the transportation of natural gas from Natural Gas Pipeline Company of America.

On December 18, 2002, an inspection was conducted of the existing pipeline route. On the day of the inspection the weather was cloudy, raining, and warm. The petition Exhibit B (map) and Exhibit A (legal route description) were used as a guide. The exhibits show the pipeline connects at the IP&L Muscatine #1 Regulator Station, located within the city limits of Muscatine, Iowa, and south of Grandview Avenue approximately 0.2 miles east of the Grandview intersection with the Highway 61 bypass.

The existing pipeline route is as follows:

Beginning at the IP&L Cedar & Houser Street Regulator Station at the Southwest corner of the intersection of Cedar and Houser Street in Muscatine, Iowa, thence South .8 miles on public right of way in the west margin of Houser Street, thence crossing Houser to the East .04 miles on public right of way in the north margin of Lucas Street, thence South 1.58 miles on public right of way in the east margin of Houser Street, thence West .06 miles crossing to the west margin of Houser Street, thence South .16 miles on private easement to the south margin of Mittman Road, thence West .22 miles on public right of way in the south margin of Mittman Road, thence South .36 miles on private easement to the Muscatine #1 Regulation Station located south of Grandview Avenue, all within the City Limits of Muscatine, Iowa.

There are three Distribution Regulation Stations, one Farm Tap, and two ¾ inch steel services directly off the pipeline. Along the route are 7 small business, 8 apartment

developments, 73 residential homes, 4 churches, 1 U.S. Post Office and 3 play grounds. The pipeline also crosses under 10 streets, 1 highway and 1 railroad crossing. There were a small amount of trees and no waterways or streams of significance that were crossed where the pipeline was installed. Because of the amount of homes, business, and churches, along with a highway and railroad crossing, this pipeline should be considered a Class 3 pipeline.

Due to the usage of this pipeline, it is a main rather than a transmission line. However, because it operates at over 150 psig it requires a pipeline permit under Rule 199 IAC 10.16.

The Maximum Allowable Operating Pressure (MAOP) of this pipeline is 275 psig based on the presence of ANSI Class 150 valves and/or flanges. See Exhibit C and 49 CFR 192.619(a)(1).

Gb

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-850

FROM: Jeffrey L. O'Neal

DATE: July 18, 2003

SUBJ: Staff Review of Interstate Power and Light Company Petition for Pipeline Permit for 3.22 Miles of 8-inch and 4-inch Diameter Natural Gas Pipeline in County, Iowa.

On October 8, 2002, Interstate Power and Light Company (IP&L) filed a petition for pipeline permit for an existing natural gas pipeline within the City of Muscatine in Muscatine County, Iowa, that has not been previously permitted with the Utilities Board (Board). IP&L discovered the pipeline did not have a valid permit during a review of its pipeline records in the Muscatine area and subsequently, notified staff regarding filing a petition.

This pipeline is a distribution main that has a maximum allowable operating pressure of 275 psig. Since it operates as a pressure greater than 150 psi, it requires a pipeline permit from the Board. (See 199 IAC 10.16.)

An informational meeting was not held for this pipeline. An informational meeting is not required because the pipeline is less than 5 miles long. (See 199 IAC 10.3.)

Route and Safety

On December 18, 2002, Gary R. Burnett, Utility Regulation Inspector, conducted a field examination of the proposed route. He filed a report regarding the route inspection on February 5, 2003. On December 18-19, 2002, and January 9 and 13, 2003, Gary R. Burnett inspected the pipeline for compliance with federal pipeline safety standards adopted by the Board. He filed a report regarding this inspection on February 5, 2003. The inspections found no problems with the route of the pipeline, and no conflicts with pipeline safety standards.

This pipeline carries natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to a regulator station near the intersection of Cedar and Houser Streets in Muscatine. (Natural Gas Pipeline Company of America is owned by Kinder Morgan.) At this regulator station, and at other

regulator stations along the route, the gas pressure is reduced for delivery through other gas distribution mains to customers in Muscatine. In addition, the pipeline supplies one farm tap and two services. The pipeline includes approximately 3.1 miles of 8-inch pipe and approximately 0.1 mile of 4-inch diameter pipe, and has a maximum allowable operating pressure of 275 psig. The entire pipeline is within the city limits of Muscatine, Iowa.

This pipeline was constructed in 1980 and 1982. Most of the route is in the public right of way of city streets in Muscatine, Iowa. Portions of the route are in easements on private property. Along the route are several businesses, churches, and apartment buildings, plus numerous residences. The entire route is in a Class 3 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 3 is a high population density classification. (See § 192.5 for definitions of class locations.)

Petition

By letters dated February 13, 2003, and June 3, 2003, Board staff advised IP&L of petition deficiencies requiring correction, and requested additional information on certain items. On January 13, 2003, March 26, 2003, and June 20, 2003, IP&L filed revisions to the petition and exhibits and provided additional information.

Exhibit E includes a copy of a letter dated October 27, 1980, from Iowa Electric Light and Power Company (IE) (k/n/a IP&L) to Milwaukee Road (n/k/a Iowa Chicago & Eastern Railroad), notifying the railroad of IE's intent to cross the railroad with a new natural gas pipeline, but does not include an approval from the railroad for the pipeline crossing of the railroad. Based on Exhibit B, this crossing appears to be at other than an approximate right angle, and a letter from IP&L filed June 20, 2003, confirms this. Rule 10.14(2) provides that for pipeline routes which include railroad crossings at other than an approximate right angle, a pipeline permit will not be granted unless a showing of consent by the appropriate authority is provided by the petitioner.

In its letter filed June 20, 2003, IP&L states it provided notice to the railroad of the crossing (as documented by the letter filed with Exhibit E), and asserts that when crossing the railroad within the public right of way it would not have been required to obtain approval from the railroad. IP&L states that when this pipeline was constructed it was not considered to be a pipeline requiring a permit from the Board, therefore IP&L did not request permission to cross the railroad at other than a right angle as required in Board rules regarding pipelines requiring a permit from the Board. In addition, IP&L requests "that the railroad approval requirement be waived in this docket as the railroad was not required to approve the crossing when the pipeline was constructed 23 years ago and obtaining the

approval at this date for an existing pipeline would be of little benefit to either IP&L or the railroad.”

IPL’s request for waiver and, in the alternative, whether it has satisfied the requirements set forth in Rule 10.14(2) are issues that will need to be decided by the administrative law judge.

No objections have been filed as of the date of this report.

Conclusions

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline complies with all design, construction, and testing requirements of the Board. Recent inspections by Board staff found no problems with the route of the pipeline, and no conflicts with pipeline safety standards. The filing appears in sufficient order that the petition can be set for hearing.

IP&L should address the following issues its prefiled testimony or at the hearing:

1. IP&L should be asked to address why this pipeline was built without first obtaining a pipeline permit from the Iowa Utilities Board as required by Board rules.
2. IP&L should be asked to address compliance with Board rules regarding approval from the railroad for crossing at other than an approximate right angle.